

**Proposed Changes and Clarifications of PEBB eligibility criteria.**

HCA is proposing that the PEBB Board adopt changes to the current PEBB eligibility criteria to achieve three goals:

- To eliminate a current “sunset” date for the provision that was adopted last August to make academic employees of community and technical colleges eligible for employer contributions for summer coverage if the employees had worked half time or more in the fall, winter, and spring quarters of the prior academic year;
- To implement the changes in eligibility criteria for part-time community and technical college academic employees enacted in 2<sup>nd</sup>SHB 2583; and,
- To establish the board's intent that an employee's eligibility for PEBB coverage is to be determined by the criteria for the one eligibility category that most closely describes the employee's work situation.

The PEBB Board has authority under RCW 41.05.065(3) to adopt changes to PEBB program eligibility criteria for employees.

HCA will adopt changes to the PEBB eligibility rule, WAC 182-12-115, to implement eligibility changes adopted by the PEBB Board. A public hearing on proposed changes to WAC 182-12-115 is scheduled for April 24, 2006. The focus of the hearing will be whether a new proposed rule draft reflects the eligibility criteria adopted by the PEBB Board at its April 20<sup>th</sup> meeting, and by 2<sup>nd</sup>SHB 2583.

**Proposed Resolution: Changes and Clarifications to PEBB Eligibility Criteria**

The PEBB board adopts the following changes to current PEBB eligibility criteria. The intent of these changes is to extend coverage for part-time community and technical college employees during breaks in employment, and to clarify that an employee's eligibility for PEBB coverage is determined by the criteria of a single eligibility category.

The HCA shall adopt the following changes to the PEBB eligibility rule:

The PEBB eligibility criteria includes the principle that persons whose employment situation may be described by more than eligibility category shall have their eligibility determined solely by the criteria of the one category that most closely applies to the person's employment situation.

(1) Permanent employees – no change;

(2) Nonpermanent employees – no change;

(3) Seasonal employees – no change;

(4) Career seasonal/instructional year employees –

The eligibility criteria for this category of employees shall apply only to persons who are employed on an instructional year or equivalent nine-month basis. It does not apply to persons who are employed on a quarter-to-quarter or semester-to-semester contract basis.

(5) Part-time faculty and part-time academic employees -

Part-time academic employees who have worked at least half-time for one or more community or technical college districts in the fall, winter, and spring quarters of an academic year shall be eligible for employer contributions for the summer break period between the spring and fall quarters. Employees must have a reasonable expectation of continued employment to be eligible for employer summer contributions.

Part-time academic employees of community or technical colleges who have established eligibility for employer contributions, and who have worked an average of half-time or more in each of the two preceding academic years, shall be eligible for:

- the continuation of employer contributions for the summer break period between the spring and fall quarters; and,
- uninterrupted employer contributions in the following academic year if the employee works at least three of the four quarters of the academic year with an average academic year workload of half-time or more. The employer contributions cease at the end of the academic year if the employee workload does not meet these requirements.



Employment in both four-year state colleges and universities and in the state community and technical colleges can be combined to establish eligibility for PEBB benefits, but only employment with the state community and technical colleges can be used to establish eligibility for summer benefits or continuation of benefits under this averaging policy.

To be eligible for the benefits of this averaging policy, part-time academic employees must notify their community or technical college employers of their potential eligibility.

(6) Appointed and elected officials – no change;

(7) Judges – no change.

## **Eligibility Policy Analysis**

Summer benefits eligibility for part-time academic employees of community and technical colleges who work at least half-time in each quarter of the academic year.

### Background:

- The settlement agreement for the Mader vs. HCA case provided that the state would fund employer contributions for PEBB benefits for part-time academic employees of community and technical colleges who had worked at least half-time in each quarter of the previous instructional year or equivalent nine-month season, and who had a reasonable expectation of continued employment. The settlement provided that coverage was to continue until changed by statute or administrative rule. [Paragraph 46]
- The Legislature has provided funding to the community and technical colleges for the summer employer contributions required for this group by the Mader decision and settlement agreement.
- The eligibility criteria for employer summer contributions that was included in the 2004 settlement agreement was adopted by the PEBB Board in April 2005 as an emergency amendment to WAC 182-12-115, and in August 2005, as a permanent amendment. The permanent rule included an April 30, 2006, sunset date because HCA planned to ask the PEBB Board to revisit the eligibility criteria following the completion of a review required by the Mader settlement agreement, discussed below.
- HCA has not received any requests to change the current eligibility criteria for employer summer contributions that apply to part-time academic employees of state community and technical colleges who work half-time or more in each quarter of the instructional year. The current criteria appears to have the support of the State Board for Community and Technical Colleges and the employee organizations.

## **Policy Analysis**

Summer benefits eligibility, and continuation of benefits, for part-time academic employees of community and technical colleges who have worked at least half-time, on average, for two consecutive academic years. [Eligibility policy established by 2<sup>nd</sup> SHB 2583 (2006)]

### Background:

- The 2004 Mader settlement agreement required the state to do a good faith review of PEBB eligibility for part-time academic employees of community and technical colleges who had worked half-time or more, on average, for two or more consecutive instructional years, but who had not worked more than half-time in each quarter of each of the instructional years.

- HCA conducted the good faith review from June 2004 through March 2006, reviewing the policy, fiscal, and administrative implications of using an “averaging” approach to determining PEBB eligibility.
- A report on the good faith review was issued in late December 2005 and provided to interested parties, including the PEBB Board. The Board took public testimony on the report at its January 17, 2006, meeting, and HCA responded to certain issues raised at that meeting in a March 2006 memorandum provided to interested parties.
- On January 4, 2006, HCA initiated a rule-making effort to clarify the provisions of WAC 182-12-115 dealing with part-time faculty. A draft of proposed amendments was published in the State Register on March 15, 2006. A public hearing on the proposed amendments will be held on April 24<sup>th</sup>.
- During the 2006 legislative session HB 2583 was introduced to provide new eligibility for employer PEBB contributions for certain part-time academic employees of state community and technical colleges. The bill was enacted by the Legislature as 2<sup>nd</sup>SHB 2583, and was signed by the Governor on March 29, 2006. It takes effect on June 6, 2006.

### 2<sup>nd</sup>SHB 2583 – Provisions

The bill makes the following changes to the PEBB eligibility rules dealing with part-time academic employees of state community and technical colleges:

- Part-time academic employees who have established eligibility for employer contributions, and who have worked an average of half-time or more in each of the two preceding academic years, are eligible for:
  - the continuation of employer contributions for the summer break period between the spring and fall quarters; and
  - uninterrupted employer contributions during the following academic year if the employee works at least three of the four quarters of the academic year with an average academic year workload of half-time or more. If the employee workload does not meet these requirements, the employer contributions cease at the end of the academic year.
- Only employment with the state community and technical colleges can be used to establish eligibility for summer benefits or continuation of benefits under the bill.
- To be eligible for the benefits of this averaging policy, part-time academic employees must notify their community or technical college employers of their potential eligibility.

## Policy Analysis

Application of current eligibility rule categories and criteria to employees who are “Career Seasonal - Instructional Year Employees”, or “Part-time Faculty and Part-time Academic Employees”. (Proposed clarification in response to *Mader* case decision).

- The PEBB eligibility rule, WAC 182-12-115 has seven different eligibility categories – Permanent, Nonpermanent, Seasonal, Career Seasonal – Instructional Year, Part-time faculty and Part-time Academic, Appointed and Elected Officials, and Judges. Eligibility criteria varies with each category.
- For many years the PEBB program has interpreted the PEBB eligibility rule to require that each employee’s eligibility be determined based on the one category that most closely described the employee’s work situation.
- Specifically, the PEBB program for many years interpreted the “Career Seasonal – Instructional Year” category and criteria as applying to K-12 employees, and not to part-time community and technical college faculty whose eligibility was described in a separate rule category, with different criteria.
- However, in 2003 the State Supreme Court interpreted WAC 182-12-115 in a different manner than the PEBB program had been following. In its decision in the *Mader* case involving part-time community and technical college employees employed on a quarter-by-quarter basis, the Supreme Court stated:

*“In our view ... employees of higher education are not excluded from any particular provision in WAC 182-12-115, provided they satisfy the criteria set forth in the provision. WAC 182-12-115(4), therefore, includes those part-time community college instructors who `work half-time or more on an instructional year (school year) or equivalent nine-month seasonal basis.’ “*

- HCA believes the PEBB board intended individual employees to have their eligibility determined under a single rule category and eligibility criteria, and did not intend employees to be able to select between multiple eligibility criteria options. If the PEBB board wants to correct the *Mader* court’s interpretation of WAC 182-12-115 and re-establish the HCA’s previous interpretation, the board will need to adopt a change to the current eligibility criteria to reflect its intent. HCA would then draft the eligibility criteria into a clarifying amendment for WAC 182-12-115.